

SCANNED

FRANKLIN K. MUKAI, )  
 )  
 Third-Party Plaintiff, )

vs. )

SPORTS SHINKO CO., LTD., a Japan )  
 corporation, SPORTS SHINKO )  
 (HAWAII) CO., LTD., a Hawai'i )  
 corporation, SPORTS SHINKO )  
 (MILILANI) CO., LTD., a Hawai'i )  
 corporation, SPORTS SHINKO )  
 (KAUAI) CO., LTD., a Hawai'i )  
 corporation, SPORTS SHINKO )  
 (PUKALANI) CO., LTD., a Hawai'i )  
 corporation, SPORTS SHINKO )  
 RESORT HOTEL CORPORATION, a )  
 Hawai'i corporation, SPORTS )  
 SHINKO (WAIKIKI) CORPORATION, )  
 a Hawai'i corporation and OCEAN )  
 RESORT HOTEL CORPORATION, a )  
 Hawai'i corporation, )

Third-Party )  
 Defendants. )

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SPORTS SHINKO (HAWAII) CO., )  
 LTD., a Hawai'i corporation, and )  
 SPORTS SHINKO (KAUAI) CO., LTD., )  
 a Hawai'i corporation, )

Third-Party Defendants/ )  
 Counterclaimants, )

vs. )

KIAHUNA GOLF CLUB, LLC, a )  
 Hawai'i, limited liability )  
 company; KG KAUAI DEVELOPMENT, )  
 LLC, a Hawai'i limited liability )  
 company; PUKALANI GOLF CLUB, )  
 LLC, a Hawai'i limited liability )  
 company; KG MAUI DEVELOPMENT, )  
 LLC, a Hawai'i limited liability )  
 company; MILILANI GOLF CLUB, )  
 LLC, a Hawai'i limited liability )  
 company; QK HOTEL, LLC, a )  
 Hawai'i limited liability )

company; OR HOTEL, LLC, a )  
Hawai'i limited liability )  
company, and KG HOLDINGS, LLC, )  
a Hawai'i limited liability )  
company, FRANKLIN K. MUKAI, )  
) )  
Third-Party Counterclaim )  
Defendants. )  
) )  
\_\_\_\_\_ )

**THIRD-PARTY DEFENDANTS SPORTS SHINKO CO., LTD., SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO., LTD., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI) CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION, SPORTS SHINKO (WAIKIKI) CORPORATION, AND OCEAN RESORT HOTEL CORPORATION'S ANSWER TO DEFENDANT AND THIRD-PARTY PLAINTIFF FRANKLIN K. MUKAI'S THIRD-PARTY COMPLAINT FILED ON SEPTEMBER 26, 2005**

Third-Party Defendants SPORTS SHINKO CO., LTD., SPORTS SHINKO (HAWAII) CO., LTD., SPORTS SHINKO (MILILANI) CO., LTD., SPORTS SHINKO (KAUAI) CO., LTD., SPORTS SHINKO (PUKALANI) CO., LTD., SPORTS SHINKO RESORT HOTEL CORPORATION, SPORTS SHINKO (WAIKIKI) CORPORATION, AND OCEAN RESORT HOTEL CORPORATION (collectively, the "SS Entities"), by and through their attorneys, Alston Hunt Floyd & Ing, and hereby respond to Defendant and Third-Party Plaintiff Franklin K. Mukai's ("Mukai") Third-Party Complaint filed herein on September 26, 2005 (the "Mukai Complaint") as follows:

**FIRST DEFENSE**

1. The Mukai Complaint fails to state a claim upon which relief may be granted.

2.

**SECOND DEFENSE**

3. In answer to Paragraph 1 of the Mukai Complaint, the SS Entities admit that Plaintiff Sports Shinko (USA) Co., Ltd. ("SS-USA") filed a Second Amended Complaint seeking certain relief against Mukai, but responds that the Exhibit "A" attached to the Mukai Complaint speaks for itself and on that basis denies any remaining allegations in that Paragraph.

4. In answer to Paragraph No. 2 of the Mukai Complaint, the SS Entities admit that Sports Shinko (USA) Co., Ltd. was at all relevant times a Delaware corporation and that its principal place of business is not Hawai'i.

5. The SS Entities admit the allegations in Paragraph Nos. 3, 4, 5, 6, 7, 8, and 9 of the Mukai Complaint.

6. In answer to Paragraph No. 10 of the Mukai Complaint, the SS Entities admit the Court has jurisdiction pursuant to 28 U.S.C. § 1367 and principles of supplemental jurisdiction.

7. The SS Entities deny the allegations in Paragraph No. 11, 12, and 13 of the Mukai Complaint and leave Mukai to his proof.

8. Any allegation not specifically admitted herein is denied.

**THIRD DEFENSE**

9. Mukai's acts and omissions, including his breaches of fiduciary duty, were a proximate cause of the injuries alleged by Plaintiff SSJ. During all relevant periods of time, the SS Entities acted through their former management, including Mukai, and could not have caused any injury except by action or omission of Mukai and/or the former management.

**FOURTH DEFENSE**

10. Mukai's claims are barred by the doctrine of unclean hands.

**FIFTH DEFENSE**

11. The SS Entities intend to rely on every defense identified in Rules 8 and 12 of the Federal Rules of Civil Procedure which is supported by evidence adduced in discovery.

**SIXTH DEFENSE**

12. The SS Entities may rely on the defense of waiver and estoppel.

WHEREFORE, the SS Entities pray this Court:

A. Dismiss Mukai's Complaint against them with prejudice.

B. Award the SS Entities their attorneys' fees and costs herein.

C. Grant the SS Entities such further and other relief that the Court deems just and proper under the circumstances.

DATED: Honolulu, Hawai'i, January 13, 2006.

  
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PAUL ALSTON  
GLENN T. MELCHINGER

Attorneys for Plaintiff  
and Third-Party Defendants,  
the SS Entities

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

SPORTS SHINKO (USA) CO., LTD., a ) CIVIL NO. 04-00126 ACK/BMK  
Delaware corporation, )

Plaintiff, )

**SUMMONS**

vs. )

KIAHUNA GOLF CLUB, LLC, a )  
Hawai'i, limited liability )  
company; KG KAUAI DEVELOPMENT, )  
LLC, a Hawai'i limited liability )  
company; PUKALANI GOLF CLUB, )  
LLC, a Hawai'i limited liability )  
company; KG MAUI DEVELOPMENT, )  
LLC, a Hawai'i limited liability )  
company; MILILANI GOLF CLUB, )  
LLC, a Hawai'i limited liability )  
company; QK HOTEL, LLC, a )  
Hawai'i limited liability )  
company; OR HOTEL, LLC, a )  
Hawai'i limited liability )  
company, and KG HOLDINGS, LLC, )  
a Hawai'i limited liability )  
company, FRANKLIN K. MUKAI, )

Defendants. )

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FRANKLIN K. MUKAI, )

Third-Party Plaintiff, )

vs. )

SPORTS SHINKO CO., LTD., a Japan )  
corporation, SPORTS SHINKO )  
(HAWAII) CO., LTD., a Hawai'i )  
corporation, SPORTS SHINKO )  
(MILILANI) CO., LTD., a Hawai'i )  
corporation, SPORTS SHINKO )

(KAUAI) CO., LTD., a Hawai'i )  
 corporation, SPORTS SHINKO )  
 (PUKALANI) CO., LTD., a Hawai'i )  
 corporation, SPORTS SHINKO )  
 RESORT HOTEL CORPORATION, a )  
 Hawai'i corporation, SPORTS )  
 SHINKO (WAIKIKI) CORPORATION, )  
 a Hawai'i corporation and OCEAN )  
 RESORT HOTEL CORPORATION, a )  
 Hawai'i corporation, )

Third-Party )  
 Defendants. )

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SPORTS SHINKO (HAWAII) CO., )  
 LTD., a Hawai'i corporation, and )  
 SPORTS SHINKO (KAUAI) CO., LTD., )  
 a Hawai'i corporation, )

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 company; KG KAUAI DEVELOPMENT, )  
 LLC, a Hawai'i limited liability )  
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 company; KG MAUI DEVELOPMENT, )  
 LLC, a Hawai'i limited liability )  
 company; MILILANI GOLF CLUB, )  
 LLC, a Hawai'i limited liability )  
 company; QK HOTEL, LLC, a )  
 Hawai'i limited liability )  
 company; OR HOTEL, LLC, a )  
 Hawai'i limited liability )  
 company, and KG HOLDINGS, LLC, )  
 a Hawai'i limited liability )  
 company, FRANKLIN K. MUKAI, )

Third-Party Counterclaim )  
 Defendants. )



**SUMMONS**

To the above-named Defendant(s):

You are hereby summoned and required to serve upon ALSTON HUNT FLOYD & ING, attorneys for Plaintiff, whose address is 18th Floor, ASB Tower, 1001 Bishop Street, Honolulu, Hawai'i 96813, an answer to the Third-Party Counterclaim which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Third-Party Counterclaim. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DATED: Honolulu, Hawai'i, JAN 13 2006.

**SUE BEITIA**

\_\_\_\_\_  
CLERK

  
\_\_\_\_\_  
(BY) DEPUTY CLERK

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing to be served on the following persons by facsimile, hand-delivery or U.S. mail, postage prepaid (as indicated below) to their respective addresses:

	<b>HAND- DELIVERED</b>	<b>FAX</b>	<b>MAILED</b>
WILLIAM A. BORDNER, ESQ. Suite 3100, Mauka Tower 737 Bishop Street Honolulu, HI 96813	(    )	(    )	( X )

Attorney for Defendant  
and Third-Party\ Plaintiff  
FRANKLIN K. MUKAI

WARREN PRICE, III, ESQ. ROBERT A. MARKS, ESQ. 728 Ocean View Center 707 Richards Street Honolulu, HI 96813	(    )	(    )	( X )
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Attorneys for Defendants  
KIAHUNA GOLF CLUB, LLC; KG  
KAUAI DEVELOPMENT, LLC;  
PUKALANI GOLF  
CLUB, LLC; KG MAUI  
DEVELOPMENT, LLC; MILILANI  
GOLF CLUB, LLC; QK HOTEL,  
LLC; OR HOTEL, LLC; AND  
KG HOLDINGS, LLC

DATED: Honolulu, Hawai'i, January 13, 2006.

  
PAUL ALSTON  
GLENN T. MELCHINGER

Attorneys for Plaintiff  
and Third-Party Defendants,  
the SS Entities